alone in No. 45 by sleeping alternate nights on a camp-bed therein. A business card, which the first defendant admitted was printed on his instructions, invited customers to "Chip Thye & Co." in both premises No. 40 and 45, using the same Telephone No. 14. The line to No. 40 was an extension of the telephone long in use in No. 45. Any caller to "Chip Thye" on the telephone book would, of course, be put through to No. 40 or 45 as may be decided at the receiving end. All these cogent facts, and other significant circumstances, were taken into account by the president of the Sessions Court and by Ismail Khan J. The judge, upholding the findings of the president, came to the conclusion that the true state of affairs was "that the purchase of No. 40 Main Road was in fact made by the first appellant and registered in the names of his wife and daughter for the same reason that he assigned his business to the second appellant, his son, on 9th October 1959." Although the transfer of the business at No. 45 was undone in 1962 it served to destroy his statutory tenancy. Ismail Khan J., in my view, was perfectly correct in so holding. On the evidence he was satisfied that the purported transfer of the business from father to son included a transfer of the tenancy. For myself, I have no doubt that the first appellant was the principal and the second defendant his assistant in a piece of sharp practice designed to deny the landlord possession of his own property. That they have succeeded for twenty years is one of unfortunate effects of rent control. The Ordinance was scandalously abused in this case.

Having said so I shall only add that this appeal has no more merits in law than on the facts. As to costs Ismail Khan J. has given reasons why he exercised his discretion as he did, quoting Devlin J. (as he then was) in *R.* v. *Cook* [1] as authority. With respect I agree.

I would accordingly dismiss this appeal with costs, affirm the judgment of Ismail Khan J. and affirm the order of the president, sessions court, to the effect that the first appellant do deliver up vacant possession of premises No. 45 Main Road, Bahau, to the respondent on or before June 30, 1967; *mesne profits* at $65 per mensem commencing from July 31, 1964 unless heretofore paid at such rate.

Barakbah L.P. and **Azmi C.J. (Malaya)** concurred.

Appeal dismissed.

Solicitors: *S. Seenivasagam & Son; Atma Singh Gill.*

TAN GIM SENG v. GURDEV SINGH GILL

[O.C.J. (Winslow J.) May 17, 1967]

[Singapore — Suit No. 90 of 1966]

Negligence — Skidding — Skid by the defendant's car resulting in injury to plaintiff — Whether brought about by defendant's default — Whether defendant negligent.

Road Traffic — Skid — Vehicle swerving to avoid accident — Collision with innocent party in swerving to avoid oncoming traffic — Whether driver negligent.

The defendant swerved his motor car to the right to avoid a cyclist who cut diagonally across his path. In the result he collided with the said cyclist and his car got on to the wrong side of the road. To avoid colliding with oncoming traffic he swerved violently to his left to get back to his correct side of the road and in doing so his motor car skidded. It was drizzling and the road was probably wet. The defendant tried to control the motor car by applying his brakes and steering to the right but the motor car collided with the plaintiff who was riding a bicycle and who was a completely innocent party.

Held: (1) the collision with the first cyclist was brought about by the sole negligence of the said cyclist;

(2) the ordinary reasonably careful user of the road today could not have done very much more than what the defendant did to try to control the motor car when it skidded and in the circumstances the defendant was not negligent.

Cases referred to:—

(1) *Hunter* v. *Wright* [1938] 2 All E.R. 621.

(2) *Richley* v. *Faull* [1965] 3 All E.R. 109, 110.

CIVIL SUIT.

H. E. Cashin for the plaintiff.

Tan Tee Seng for the defendant.

Cur. Adv. Vult.

Winslow J.: The question I have to decide in this case is whether the skid in question which led to the collision with the plaintiff was brought about by the defendant's negligence and, if not, whether he dealt with the skid in the proper manner so as to avoid the result of such skid.

I have no doubt that the collision with the first cyclist earlier on was brought about by the sole negligence of that cyclist. In attempting to avoid him the defendant swerved to his right. Complaint was made that he should have applied his brakes. The defendant says that he thought a swerve to the right was the better of the two alternatives. I cannot say that he was negligent in doing so in the emergency that faced him. In swerving back to his former course his car skidded after travelling 20 feet from the first collision and swivelled round and came to rest on the left hand kerb facing in the opposite direction after knocking down the plaintiff.

I accept the explanation given by the defendant that he did all that he could to avoid both collisions. Moreover, there is no evidence of excessive speed or of bad or careless driving on his part. He is also supported by an eye-witness who saw the first collision whose evidence, which is to the effect that the first cyclist cut across

the defendant's path, I accept.

It was contended that, after the skid began, the defendant travelled slightly over a hundred feet whereas in *Hunter* v. *Wright* [1] where the defendant was held not to blame, the car travelled only 13 to 20 feet and that therefore this showed that he did not deal with the skid in the proper manner. I do not think that the greater distance travelled by the defendant necessarily shows that he acted improperly in dealing with the skid after its commencement. The speed of the car in *Hunter's* case was 16 to 20 m.p.h. whereas the defendant's speed was somewhat more though less than 30 m.p.h. The defendant gave it as between 25 to 28 m.p.h. which does not seem excessive and the defendant says that, after the skid began, he tried to control his car by using his brakes and steering to the right to prevent its making the left-handed U-turn which it did to the left side of the road notwithstanding his efforts. One need hardly add that an important factor in reducing the distance travelled during a skid is how quickly one hits an obstruction such as a pavement.

He had been compelled by the reckless action of the first cyclist to encroach on the path of on-coming vehicles and he had a duty to avoid the latter. He says he swerved violently to the left and went into a skid which he tried his best to control without success.

The principal question is, however, whether the defendant was at fault in going into the skid. As MacKenna J. said in *Richley* v. *Faull*:—[2]

"In finding that the defendant was negligent I adopt, with a qualification to be mentioned presently, the reasoning of Lord Greene M.R., in *Laurie* v. *Raglan Building Co., Ltd.* It was a case in which the defendants' lorry had struck and killed the plaintiff's husband who was standing on the pavement in an omnibus queue. Lord Greene M.R., said: '. . . . the plaintiff gave evidence which showed in the first instance that the position of the lorry over the pavement was due to a skid, and it is contended on behalf of the respondents that, assuming that a *prima facie* case of negligence arose, the circumstance establishing that the accident was due to a skid is sufficient to displace that *prima facie* case. In my opinion, that is not a sound proposition. The skid by itself is neutral. It may or may not be due to negligence. If, in a case where a *prima facie* case of negligence arises, such as that with which I have been dealing, it is shown that the accident is due to a skid, and that the skid happened without fault on the part of the driver, then the *prima facie* case is clearly displaced, but merely establishing the skid does not appear to me to be sufficient for that purpose.' I, of course, agree that where the respondents' lorry strikes the plaintiff on the pavement or, as in the present case, moves on to the wrong side of the road into the plaintiff's path, there is a *prima facie* case of negligence, and that this case is not displaced merely by proof that the defendant's car skidded. It must be proved that the skid happened without the defendant's default. But I respectfully disagree with the statement that the skid by itself is neutral. I think that the unexplained and violent skid is in itself evidence of negligence. It seems hardly consistent to hold that the skid which explained the presence of the respondents' lorry on the pavement or, as here, on the wrong side of the road, is neutral, but that the defendant must fail unless he proves that this neutral event happened without his default. Whether I am right in this or wrong, the conclusion is the same: the defendant fails if he does not prove that the skid which took him to the wrong place happened without his default."

In answering the question, therefore, as to whether he went into the skid without default on his part I have considered the speed at which he was travelling which does not appear to have been excessive and also the emergency which caused him to swerve to his right and later to his left. According to him it was drizzling and the road was probably wet. There is little evidence as to the precise cause of the skid apart from his violent swerve to the left on a wet road surface and I accept the fact that this was its primary cause. I have also asked myself whether in fairly heavy traffic he should have been travelling more slowly than 25-28 m.p.h. but this does not seem to be unreasonable for Outram Road which is 40 feet wide in the vicinity of the collisions and where, according to him, the car ahead of him was 50 yards away. I see no reason why I should not accept his evidence on these matters and his explanation as a whole.

Perhaps the exercise of considerable skill such as that said to have been exhibited by the Canadian Helldrivers, who visited Singapore recently, might have helped to avert the collision with the plaintiff. I do not think, however, that the ordinary, reasonably careful user of the roads today could have done very much more than that which the defendant did.

I therefore find that the defendant was not negligent and the plaintiff's claim (much as I sympathise with him) is dismissed with costs.

I should have thought that in a case such as this, where the plaintiff is a completely innocent party, the insurers would have made an offer of settlement, at least on an *ex gratia* basis. This I hope they will do, notwithstanding the result of the case.

I assess the general damages, had the plaintiff succeeded, at $1,750. Special damage has been agreed at $350. Costs will be on the lower scale.

Claim dismissed.

Solicitors: *Murphy & Dunbar; Allen & Gledhill.*